

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 28293-7-III

Respondent,

Division Three

v.

ANTHONY ROSE WALKER,

UNPUBLISHED OPINION

Appellant.

Sweeney, J. — The statute at issue here permits “[a]ll probation counselors” to arrest “juveniles under their supervision.” RCW 13.04.040. Here, for the first time on appeal, the defendant argues that the statute limits the arrest authority of a probation counselor to only those juveniles specifically under that counselor’s supervision. First, the claim of error does not appear to be a claim of “manifest constitutional error.” But, even assuming that it is such a claim and reviewable in the first instance, we conclude that the statute conferred authority on the counselor here to arrest the defendant and we, therefore, affirm the adjudication for third degree assault but vacate the adjudication for resisting arrest.

FACTS

Anthony Walker is a juvenile with a history of offenses. He walked down a street in Moses Lake, Washington, with a friend. Kevin Hake is a probation counselor for Grant County. He spotted Mr. Walker and called dispatch to see if he had any outstanding warrants. Mr. Walker had outstanding warrants. Mr. Hake then pulled over in his state vehicle, marked with official insignias on both front doors, and approached Mr. Walker. Mr. Hake also wore a Grant County Youth Services hat and badge indicating he worked for Grant County Youth Services. Mr. Hake told Mr. Walker that he needed to talk with him. Mr. Walker took off running. And Mr. Hake gave chase.

He caught up with Mr. Walker and grabbed his arm. Mr. Hake then told Mr. Walker that he was under arrest. Mr. Walker said he did not want to go to jail and struck Mr. Hake multiple times. Mr. Hake wrestled Mr. Walker to the ground and subdued him. Police arrived. Mr. Hake then picked Mr. Walker up and turned him over to the officers.

The State charged Mr. Walker with third degree assault and resisting arrest. Mr. Walker did not challenge Mr. Hake's statutory authority to arrest. A judge found Mr. Walker guilty on both counts following a hearing.

DISCUSSION

RCW 13.04.040 is the legislative authority the State relies on for Mr. Hake's

authority to arrest Mr. Walker. It says in pertinent part that “[a]ll probation *counselors* shall possess all the powers conferred upon sheriffs and police officers to . . . make arrests of juveniles under *their supervision*.” RCW 13.04.040 (emphasis added). Mr. Walker contends that the language of the statute requires that he specifically be under Mr. Hake’s supervision before the statute gives Mr. Hake authority to arrest him. And he argues he was not under Mr. Hake’s supervision. The State responds that the language of the statute is collective and categorical and means just what it says; that is, that all (as in every) counselors have authority to arrest any juvenile under their (as in collective) supervision.

The parties here neither brief nor argue the threshold question of whether we must review Mr. Walker’s challenge to Mr. Hake’s authority to arrest him for the first time on appeal. Mr. Walker neither objected nor argued in the trial court that Mr. Hake lacked authority to arrest him. And so neither the court nor counsel had the opportunity to develop a record to support or undermine the arguments he now makes on appeal. For example, we must assume, if we pass on Mr. Walker’s assignment of error, that Mr. Hake does not directly supervise Mr. Walker, although that may well be a question of fact. Report of Proceedings at 48.

We will normally not consider an objection raised for the first time on appeal.

State v. Scott, 110 Wn.2d 682, 685, 757 P.2d 492 (1988); *State v. Wicke*, 91 Wn.2d 638, 591 P.2d 452 (1979). In order for us to do so, the appellant must show manifest constitutional error. *State v. O'Hara*, 167 Wn.2d 91, 103, 217 P.3d 756 (2009). Of course, there is no showing that the error assigned here is of constitutional magnitude and, even if it is, whether any error is manifest. *Id.* We, nonetheless, elect to address the assignment of error in this unpublished opinion since we can conceive of a procedural posture that might ultimately get the issue before us. RAP 1.2. And both parties address the substance of the claim, not its procedural posture.

Interpretation of a statute is a question of law that we review de novo. *State v. Watson*, 146 Wn.2d 947, 954, 51 P.3d 66 (2002). If a statute is clear on its face, we use the plain language to identify legislative purpose and intent. *Id.* We interpret the words and phrases used in accordance with statutory definitions; however, in the absence of statutory definitions, standard dictionary definitions control. *Id.*; *State v. Sullivan*, 143 Wn.2d 162, 175, 19 P.3d 1012 (2001).

RCW 13.04.040 does a number of things. First, it authorizes a county or judicial administrator to appoint one or more probation counselors. RCW 13.04.040. Second, and this is significant for our analysis here, the statute lists “[t]he probation counselor[’s]” specific authority:

The probation counselor shall:

- (1) Receive and examine . . .
- (2) Make recommendations . . .
- (3) Arrange and supervise . . .
- (4) Prepare . . .
- (5) Supervise

Id. This language is specific and refers to counselor in singular form. The phraseology at issue here is different but it is in the same statute. It is couched in the plural. In relevant part, it provides that, “[a]ll probation counselors shall possess all the powers conferred upon sheriffs and police officers to serve process *and make arrests of juveniles under their supervision.*” *Id.* (emphasis added).

Again, we presume that words in a statute have their ordinary dictionary meanings. “All” means “the whole amount or quantity of,” and “every member or individual component of,” and “each and every one of.” Webster’s Third New International Dictionary 54 (1993). RCW 13.04.040’s use of the word “all,” then, indicates the full complement of counselors in the county or judicial district. The word “their” means them or themselves especially as possessors, agents, or objects of an action. Webster’s Third New International Dictionary 2369-70. And, so, the word “their” in RCW 13.04.040 is a pronoun for “[a]ll probation counselors.” We, then, read the statute to mean that all probation counselors have the authority to arrest any juvenile under their collective supervision. And we, of course, interpret these specific provisions of the statute in the

context of the full statute. *State v. Gamble*, 146 Wn. App. 813, 819, 192 P.3d 399 (2008). In doing so, we note that the legislature easily could have included this arrest authority in the earlier list of duties of an individual “probation counselor.” But it did not.

We presume that the legislature intended what it said and that is that this latter language refers to a collective enterprise; otherwise, it would have used the same language used earlier in the statute—the probation counselor shall have authority to make arrests of juveniles under his or her supervision.

Mr. Walker’s suggested reading of this statute is plausible. The word “their” can be used as an indefinite modifier in place of his or her. Webster’s Third New International Dictionary 2370. But that is not the way “their” is used here. Here, when considered in context, it clearly refers to “[a]ll probation counselors” at the beginning of the sentence. RCW 13.04.040. And we will not read an ambiguity into a statute simply because another reading is possible. *State v. Gonzalez*, 168 Wn.2d 256, 263, 226 P.3d 131 (2010).

We conclude, then, that the legislative intent and purpose of RCW 13.04.040’s arrest-powers provision is to give probation counselors of a specific county or judicial district the authority to arrest juveniles under their supervision as a whole. We, therefore,

hold that Mr. Hake had legal authority to arrest Mr. Walker.

Double Jeopardy

Mr. Walker next contends that convictions on both third degree assault and resisting arrest violate constitutional prohibitions against double jeopardy. The State agrees. We accept the concession and vacate the adjudication for resisting arrest.

Sufficiency of the Evidence

Mr. Walker also challenges the sufficiency of the evidence to support his adjudication for third degree assault. But his challenge is based on his assumption that his arrest was unlawful because Mr. Hake had no authority under the statute to arrest him. We have rejected that premise and so his sufficiency argument also fails.

We affirm the adjudication for third degree assault and vacate the adjudication for resisting arrest.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

Sweeney, J.

WE CONCUR:

No. 28293-7-III
State v. Walker

Kulik, C.J.

Brown, J.